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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,163	10/23/2003	Reiner Eschbach	D/A2327	1667

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EXAMINER

ABEL JALIL, NEVEEN

ART UNIT	PAPER NUMBER
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2165

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/693,163

Applicant(s)

ESCHBACH ET AL.

Examiner

Neveen Abel-Jalil

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/12/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12-July-2006 has been entered.
2. The amendment filed on 12-July-2006 has been received and entered. Claims 1-36 have been cancelled. Claim 37 has been newly added. Therefore, claim 37 is pending in this application.

Claim Objections

3. Claim 37 is objected to because of the following informalities:

In claim 37, line 13, the recitation of “*using* a content based image retrieval module” constitute intended use making the recitation following not carry any patentable weight since it never has to occur. Claim should be amended to recite more firm and positive language (i.e. “with”, “by”, “via” or “in”). Appropriate correction is required.

In claim 37, the recitations of “can be” and “can use” both are indirect, passive, and suggesting optionally, therefore making the recitation following not carry any patentable weight

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since it never has to occur. Claim should be amended to recite more firm and positive language (i.e. "is", "that", "selects" or "will"). Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 37, in the second to last sentence in the claim, the limitation of "stating the accepted word to be any of one of the previously listed keywords" appears to be misleading to the Examiner since it makes the previous limitation unnecessary since only one keyword—the accepted keyword- which can be any of "primary, secondary, new, finer scale" is the one which will be selected for classification and storage taking away from the importance of performing the previous steps in the invention. Should the accepted keyword cover all combination? Should it be reference back to being the second keyword? Or is it meant to be a supplemental to the classification and storage process? Will this accepted keyword be used in future classification and extraction? Clarification is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claim 37 is rejected under 35 U.S.C. 102(e) as being anticipated by Kinjo (U.S. Pub. No. 2003/0193582 A1).

As to claim 37, Kinjo discloses a method comprising:

obtaining at least one stored image wherein the at least one stored image is stored within an image database, wherein the at least one stored image is associated with at least one of at least one keyword, wherein a multitude of keyword statistics are stored in a database statistics module, and wherein the keyword statistics indicate a probability that one of the at least one keyword and another one of the at least one keyword are both associated with the same one of the at least one stored image (See Figure 4, shows two or more keywords associated with an image, also see page 1, paragraphs 0010-0013);

obtaining an image and comparing the image to the at least one stored image to identify at least one similar image wherein Image similarity is based on at least two factors and wherein one of the at least two factors is closeness in time of image acquisition and wherein another one of the at least two factors is determined using a content based image retrieval module (See page 8, paragraphs 0146-0148, and see page 10, paragraph 0167);

producing at least two primary keywords based on the at least one keyword associated with the at least one similar image (See Figure 4, and see page 2, paragraph 0030);

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determining at least two primary likelihoods associated with the at least two primary keywords based the at least two factors (See page 1, paragraph 0008, and see page 4, paragraph 0070);

using the keyword statistics stored in the database statistics module and the at least two primary likelihoods to determine at least two secondary likelihoods indicating which of the at least one keyword is likely to occur in association with at least one of the at least two primary keywords (See page 4, paragraphs 0072-0073);

producing at least two finer scale keywords based on the at least two secondary likelihoods (See page 11, paragraph 0187);

presenting the at least two primary keywords and the at least two finer scale keywords to a user wherein an order of presentation is based on the at least two primary likelihoods and the at least two secondary likelihoods (See page 10, paragraphs 0181-0183);

presenting a new keyword selection to the user wherein the user can use the new keyword selection to create a new keyword (See page 11, paragraph 0200);

obtaining at least one accepted keyword from the user wherein any one of the at least two primary keywords, the at least one new keyword, or the at least two finer scale keywords can be one of the at least one accepted keyword (See page 11, paragraphs 0186-0190); and

storing the image within the image database and in association with the at least one accepted keyword (See page 4, paragraph 0072).

Response to Arguments

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8. Applicant's arguments with respect to claim 37 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neveen Abel-Jalil whose telephone number is 571-272-4074. The examiner can normally be reached on 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Gaffin can be reached on 571-272-4146. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Neveen Abel-Jalil
July 28, 2006